

CAUSE NO. DC-18-19179

**WADE CALLENDER,
INDIVIDUALLY AND ON BEHALF
OF THE HATCH, LLC**

IN THE DISTRICT COURT

Plaintiffs,

I-162ND JUDICIAL DISTRICT

V.

**RANDALL PITCHFORD II AND
GEARBOX SOFTWARE, LLC.**

Defendants

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Wade Callender, in his individual capacity and on behalf of The Hatch, LLC, files this Original Petition against Randal Pitchford II and Gearbox Software, LLC.

PRELIMINARY STATEMENT

Randy Pitchford is a manipulative and morally bankrupt CEO who shamefully exploited his oldest friend, a Texas attorney and military veteran named Wade Callender.

No one should be fooled by Randy Pitchford's incessant misdirection: it was Randy Pitchford himself who breached his fiduciary duties by exploiting Gearbox employees and property to fund Pitchford's private cravings. For example, while Randy was denying employee raises predicated on low cash reserves, Randy secretly saddled Gearbox's employees with the burden of repaying a private, personal \$12M "bonus" that Randy Pitchford rerouted from

Gearbox's publisher directly to Randy's side entity, "Pitchford Entertainment Media & Magic." Unbeknownst to Gearbox employees, Randy Pitchford arranged to shift the burden of Randy's long-standing, multi-million dollar "bonus" to the very same employees from whom he hid the arrangement. This obvious breach of fiduciary duty is just the tip of the Pitchford iceberg.

DISCOVERY CONTROL PLAN

1. Discovery shall be conducted under Level 3 pursuant to the TEXAS RULES OF CIVIL PROCEDURE.

PARTIES

2. Plaintiff WADE CALLENDER is an individual residing in Denton County, Texas.

3. Plaintiff THE HATCH, LLC is a Texas Limited Liability Company with its registered address in Collin County, Texas, owning certain real property, located Dallas County, Texas. The Hatch, LLC, is a "closely held limited liability company" as that term is defined by Section 101.463 of the Texas Business Organizations Code and therefor the standing and notice requirements of Texas Business Organization Code sections 101.452 through 101.459 do not apply to this lawsuit. Plaintiff Wade Callender brings his causes of action related to The Hatch, LLC in his individual capacity, in his derivative capacity as a current member of The Hatch, and as a member at the time the claims related to the Hatch accrued. Callender also invokes Texas Business Organization Code section 101.463(c) and states that justice requires that the derivative proceeding claims brought by him as a member of The Hatch—a closely held limited liability company—should be treated by the Court as a direct action brought by him for his own benefit, and any recovery be paid directly to him in order to protect the interests of creditors and/or other member of The Hatch.

4. Defendant RANDALL PITCHFORD II is an individual residing in Denton County, Texas and co-owner of The Hatch properly located in Dallas County, Texas.

5. GEARBOX SOFTWARE LLC is a Texas Limited Liability Company with its principal place of business located in Collin County, Texas.

6. This Court has jurisdiction over this matter, as all of the parties are residents of Texas and/or conduct business in in Texas, and the amount of the dispute is within the jurisdictional limits of this Court. This case is not subject to removal to federal court because no claims are being asserted that arise under federal law. Plaintiffs respectfully request damages in excess of \$1,000,000.00.

7. Venue is mandatory in Dallas County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE §15.020 pursuant to specific forum/venue selection clauses within agreements material to this litigation. Venue is further proper in Dallas County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE §15.002(1), as Dallas County is the county in which all or a substantial part of the events or omissions giving rise to the claim(s) occurred.

RELEVANT FACTS

CALLENDER AND PITCHFORD HAVE BEEN FRIENDS FOR ABOUT FORTY YEARS

8. Plaintiff Callender is a former federal prosecutor, Lieutenant Commander in the Navy JAG Corps and licensed Texas attorney. Plaintiff Callender served as Gearbox's General Counsel from approximately 2010 through August of 2018. Privilege, if any, was purposefully waived by the Defendants prior to the commencement of this action.

9. Plaintiff Callender is a 33.3% owner and governing member of The Hatch, LLC. He also has a minimum 3% ownership stake in Gearbox.

10. Defendant Randall Pitchford II (“Pitchford” or “Randy”) is the President and CEO of Gearbox Software, LLC (“Defendant Gearbox” or “Gearbox”).

11. There is great deal of history between the parties. Callender and Pitchford first met in Maryland in the early 1980’s, when they were neighboring children with a shared affinity for video games. This began a forty-year friendship between Callender and Pitchford.

12. After graduating law school and clerking for a federal appellate judge in the District of Columbia, Callender served in the Navy JAG Corps. Between 2004 and 2010, Callender practiced civil, criminal and appellate law on the East Coast.

13. Over the years, Pitchford repeatedly tried to persuade Callender to work with him at Gearbox, the Texas company co-founded by Pitchford. In 2008, Pitchford visited Callender in Washington D.C. to entice Callender’s relocation to Texas as in-house counsel for Gearbox. Callender ultimately acquiesced to Pitchford’s pleas; by July 2010, Callender relocated to Texas, and was a licensed Texas attorney serving as Gearbox’s Executive Counsel. In 2011, Callender was promoted to General Counsel of Gearbox, a position that served Callender with distinction for nearly a decade. In the course of his employment, Gearbox and Callender executed an employment agreement mandating that any disputes regarding Callender’s employment with Gearbox must be litigated in Dallas County, Texas.

**DEFENDANT PITCHFORD’S PROMISES PLAINTIFF CALLENDER
GEARBOX EQUITY & TRANSACTION FEES**

14. In 2015, Defendant Pitchford visited Plaintiff Callender’s home to discuss Gearbox’s business future. During this time, Pitchford and Callender discussed Gearbox’s dire need for corporate restructuring, new streams of outside capital, and portfolio diversification.

15. Defendant Pitchford represented to Plaintiff Callender that, in consideration of Callender’s efforts above and beyond that of a general counsel, Gearbox would provide Plaintiff

Callender equity in Gearbox, atop additional compensation and benefits. According to the representations and promises by Pitchford, Callender would receive a minimum 3% equity interest in Gearbox as well as equity interests in other ventures. Callender accepted Pitchford's offer, including the 3% equity. Pitchford also promised and represented that Gearbox would pay Callender a transaction fee percentage exceeding any amount paid to any other broker(s) for outside financing efforts involving Gearbox, which Callender also accepted.

GEARBOX'S OWNERS INVITE CALLENDER TO JOIN A NEW ENTITY

16. In 2015—and in reasonable reliance upon Pitchford's representations—another Gearbox founder, Brian Martel abruptly departed from Gearbox and relinquished his ownership interests to the valuable studio he co-created. Following Callender's successful intervention in the equity transaction, various claims against Randy Pitchford and Gearbox were “released,” effectively consolidating Gearbox's ownership into a 50/50 split between Pitchford and Gearbox's only remaining partner, Stephen Bahl. This outcome enabled Randy to capture more than an additional 16.5% equity in Gearbox; Callender's efforts also garnered Pitchford operational authority over Gearbox's day-to-day studio operations in exchange for virtually nothing from Pitchford himself.

17. In consideration for Callender's additional work and achievements for Gearbox—and presumably because co-founder Bahl convinced Pitchford to honor his word following their capture of Brian Martel's equity—Pitchford made Callender an equal 33.3% owner in the new Limited Liability Company called “The Hatch, LLC” (the “Hatch”).

18. The Hatch existed for various purposes. One purpose included the buying and owning of certain property, including the nearly \$2M of real estate that is located at 4445 College Park Drive, Dallas, Texas. The business papers for The Hatch were drafted and

negotiated primarily in the Dallas offices of the law firm of Thompson & Knight, and the functions of The Hatch will become manifest as discovery in this case unfolds. That said, it is undisputed that Callender currently possesses a co-equal 33.3% ownership interest in the Hatch and its assets, alongside Pitchford and Bahl.

CALLENDER ACCEPTS GEARBOX'S OFFER TO JOIN GEARBOX'S NEWLY-FORMED MANAGEMENT TEAM, KNOWN AS THE "CABINET"

19. After dispatching one fellow co-founder of Gearbox (i.e., Brian Martel), Pitchford enlisted Callender's help in another area: Gearbox's subsequent restructuring. This resulted in the creation of a new internal group to run Gearbox's affairs. Comprised of seven executives, this management group is referred to as the "Cabinet."

20. Pursuant to the "Cabinet Pact" executed by all Cabinet Members, each of the founding Cabinet members received instant job security (e.g., Cabinet Members were no longer deemed "at-will" employees), and each Cabinet Member received an entitlement to a percentage of Gearbox profits. Callender is one of the founding Cabinet Members entitled to such benefits.

21. For the benefit of each Cabinet Member, the Cabinet Pact states: "[On] a quarterly basis, Cabinet Members shall, in addition to their other salary and benefits, receive a percentage of the Studio's Net Profits (per the percentages stated herein and referred to as 'Additional Cabinet Profit Shares')."
This additional percentage of Gearbox profits for each Cabinet Member is separate from—and atop—the equity interest and transaction fee(s) that Pitchford promised to Callender.

22. As a Cabinet Member, Callender received a contractual entitlement to 1% in Additional Cabinet Profit Shares under the Cabinet Pact, an amount that was paid to Callender quarterly. Defendant Pitchford, who was also a signatory to the Cabinet Agreement, granted himself 2% Additional Cabinet Profit Shares.

23. The Cabinet Pact also narrowed the circumstances under which any Cabinet Member—including Callender—could depart. Specifically, the Cabinet Pact states:

Cabinet benefits and terms cannot be altered without the unanimous consent of all Cabinet Members, with these 2 narrow exceptions: 1) any Cabinet Member can be removed for cause by a majority vote of all Cabinet Members so long as the majority vote includes the affirmative vote of the Studio's President; and 2) any Cabinet Member can voluntarily depart upon reaching an agreement with the President regarding the Cabinet Member's exit-strategy (emphasis added).

24. As stated in the governing Cabinet Pact, no Cabinet Member can voluntarily depart (i.e., resign) without first “reaching an agreement with [Pitchford] regarding the Cabinet Member’s exit-strategy.” Put simply: Callender could not resign without first reaching an agreement with Pitchford about the terms of Callender’s resignation.

25. During his employment, Plaintiff Callender was never subjected to a removal vote of any kind, nor did Callender and Pitchford ever “reach an agreement” regarding Callender’s exit strategy.

26. Notably, the Cabinet Pact does not contain any provision compelling—or allowing—any venue different from the venue that is expressly mandated in Callender’s employment agreements: Dallas County, Texas.

CALLENDER FACILITATES THE DESIRED FINANCIAL TRANSACTIONS FOR GEARBOX

27. In furtherance of Gearbox’s desired capital investments—the topic that Pitchford introduced during his visits to Callender’s home—Callender helped Pitchford to secure the assistance of an investment broker named Greg Richardson.

28. Gearbox, through Pitchford, reached a deal by which Richardson received \$15,000 a month. The parties agreed that this amount would be recouped from a 3% commission that Richardson would receive whenever each financing deal closed (the “Transaction Fee”).

29. The Gearbox deal struck between Pitchford and Richardson mirrored the deal that Pitchford struck with Callender, with one distinction: Randy was adamant that, relative to any other brokers (e.g., Richardson) Gearbox would pay Callender a greater Transaction Fee amount on all such financing deals. It was Pitchford who proposed this arrangement and, following Callender's acceptance, it was Pitchford who repeatedly emphasized his own prior assurances that Callender would receive a Transaction Fee greater than broker Richardson's (i.e., no less than 3.1% of the total amount).

30. Callender and Richardson proved successful in their efforts to capture financing on Gearbox's behalf. By July 2017, the efforts of Callender and Richardson culminated in an outside capital deal with a lender named WTI. With this deal, Gearbox received an initial loan amount of \$15,000,000, plus another line of credit in the amount of \$10,000,000 upon repayment of the original loan.

31. Of note, neither Richardson nor Callender operated under a signed contract prior to the performance or the conclusion of their funding efforts. The repeated assurances of Randy Pitchford were universally relied upon in good faith. After closing the WTI financing deal, however, both Richardson and Callender grew insistent that their deals be reduced to writing and their Transaction Fees paid. Pitchford requested that Callender prepare agreements for both Callender and Richardson and, in August 2014, Pitchford finally signed Richardson's agreement.

32. When Callender presented Pitchford with what Pitchford requested (i.e., the near-identical agreement terms that Pitchford promised Callender), Pitchford suddenly claimed that he needed additional time to review the terms further. This became among the first in a long line of excuses made by Pitchford to delay paying Callender for Callender's performance.

33. Callender's continued reliance upon Pitchford's reassurances was not only reasonable, but actively bolstered by Randy Pitchford. When testifying under oath in 2016, for example, Pitchford specifically validated Callender's reliance upon their "interactions, conversations and history" when it came to Callender's interests, in an exchange that concluded with the following:

Q [Attorney]: Okay. Is it of the nature that Mr. Callender is providing services and that if the businesses go well, those services will be recognized with some interest in the business in the future?

A: [Randy Pitchford]: That sounds about right.

See Ex. 1, October 5, 2016, Sworn Testimony of Randy Pitchford.

34. In light of the above—and the fact that Pitchford and Callender enjoyed a close 40-year friendship since their childhood together—Callender continued to trust Pitchford and Gearbox to fulfill the outstanding obligations owed to Callender regarding Callender's equity and compensation. Again, broker Richardson also worked for more than a year in reliance upon the same verbal agreement with Randy Pitchford, receiving a transaction fee that was ultimately paid pursuant to a written agreement executed after-the-fact. This precedent reasonably alleviated concerns about Pitchford's non-compliance over prolonged periods.

35. Thus, Callender continued his work for Gearbox as a dedicated and highly productive executive despite Pitchford's non-performance. In reliance upon Pitchford's promises, Callender stayed at Gearbox and went above and beyond for Gearbox. In addition to defending Gearbox against high-profile litigation—including at least one federal class action instigated by Randy Pitchford's assurances to consumers who purchased *Aliens: Colonial Marines*—Callender was securing numerous multi-million-dollar entertainment deals, spearheading the development of Gearbox, facilitating new avenues for publishing and

development in new formats and territories, etc. The list goes on. Unfortunately, Pitchford did not take his responsibilities as seriously as Callender.

36. For example, in 2014, Gearbox was contacted (via e-mail) by someone who discovered a USB drive at a Medieval Times restaurant in Dallas County, Texas. Because the USB drive contained sensitive Gearbox corporate material (e.g., information about Gearbox's employees, development efforts, corporate partners, and the like), the Good Samaritan rightly suspected that the USB drive belonged to a high-level Gearbox employee. Upon hearing of the discovery of this USB drive, Pitchford declared that the thumb drive was his and requested its prompt return.

37. While this USB drive was being recovered in Texas, Pitchford, Bahl and Callender were in San Francisco mediating yet another case in which Pitchford's conduct was front-and-center: the *Aliens: Colonial Marines* class-action. Pending his return to Texas, Callender instructed Gearbox personnel in Texas to make a copy of the USB drive to ensure that its contents could be verified and, if necessary, acted upon. Before Callender could review the USB drive contents, Pitchford intervened, by retrieving the lost USB drive himself and ordering Gearbox personnel to destroy the copy that Callender requested.

38. On information and belief, Randy Pitchford's USB drive contained much more than the sensitive corporate documents of Gearbox and business partners like Take-Two Interactive, 2K Games, Sega, Microsoft, Sony, etc. Upon information and belief, Randy Pitchford's USB drive also contained Randy Pitchford's personal collection of "underage" pornography.

39. On information and belief, Pitchford's USB drive experience wasn't enough to deter Randy Pitchford's mischief, as Pitchford subsequently syphoned Gearbox profits to fund

parties thrown by Pitchford and his wife at their home for their own personal benefit. At these events—which Pitchford and his wife affectionately term “Peacock Parties”—adult men have reportedly exposed themselves to minors, to the amusement of Randy Pitchford.

40. Things grew progressively worse as Randy Pitchford insisted upon placing his personal interests above the interests of Gearbox and its personnel. In November 2016, Pitchford belatedly informed Callender that Randy had privately reached a “side-deal” with Take 2 Interactive/2K Games, the Publisher of Gearbox’s *Borderlands* franchise. This deal—which Pitchford insisted upon concealing—afforded Randy Pitchford a personal, secretive “Executive Bonus” of \$12,000,000 to be paid directly to a Pitchford entity called “Pitchford Entertainment Media & Magic, LLC.”

41. Because Pitchford agreed to have his private “bonuses” counted as advances upon the royalties owed to Gearbox employees, those employees—and their families—won’t receive any of their accrued royalty or “profit” shares until their work repays Randy’s bonuses to the Take-Two Interactive/2K Games. This is a particularly tragic exploitation, because these millions are being syphoned to Randy Pitchford’s personal accounts instead of funding the development of *Borderlands*. It bears repeating: While Randy Pitchford accuses others of breaching their duties to Gearbox in order to show them the door, Gearbox personnel are having their royalties burdened and their belts tightened by Randy Pitchford himself.

42. Callender raised his concerns about this arrangement to both Pitchford and Gearbox’s only remaining co-founder, Stephen Bahl. When Callender mandated that Pitchford be more transparent with his employees about his actions, Pitchford ignored this advice and continued to insist upon the redaction of his “Executive Bonus” terms from Gearbox contracts.

The relationship between Randy Pitchford and Callender, as Gearbox's General Counsel, grew more estranged thereafter.

43. By late 2017, Callender was frustrated but continued to perform for Gearbox and its leadership. Despite Pitchford's persistent failures, Callender personally intervened in the Pitchford family's embezzlement problems the instant he learned of those problems, recovering nearly \$750,000 in cash for the Pitchford family. Callender also facilitated a civil judgment against the accused embezzler totaling more than \$2 million for the Pitchford family. But, true to form, Randy Pitchford thanked Callender in a uniquely Pitchford way: Pitchford actively concealed Callender's successful intervention(s) and recovery of funds when retelling the story to news outlets in October 2018.

44. As 2017 ended and 2018 neared, Callender grew insistent that Pitchford provide evidence that Pitchford and Gearbox would honor and perform each bargain regarding Callender's equity and compensation. In response, Pitchford reassured Callender that Pitchford was already in the process of honoring his promises and insisted that he would uphold his end of the bargain. A self-professed magician and master-of-human manipulation, Pitchford grew ever-confident that Callender would continue to reasonably rely on the promises coming from Callender's oldest friend/President/CEO.

45. But Callender grew more concerned. Callender tried to reason with Pitchford, explaining that trust needed to be balanced with a family's need for something beyond verbal promises. On at least one occasion, Callender even offered Randy Pitchford the opportunity to document-now-but-pay-later. In response, Pitchford again promised to uphold his end of every bargain. But, as many gamers have complained over the years, Pitchford failed to perform as promised.

46. Instead, Pitchford began to “gaslight” Callender. Over time, Pitchford began to deny that he ever made any representations or agreements with Callender regarding Callender’s equity and compensation. Pitchford even expanded his denials to include the transaction fee that was inexplicably paid to broker Richardson but not Callender (even though Pitchford promised to pay Callender more than what was paid to any broker). Callender pressed Pitchford to explain how a pledge to pay Callender “more” could become an excuse to pay Callender *nothing*. Pitchford responded by calling Callender names, suggesting that Callender was being a greedy friend.

47. Callender was disappointed, but resolute; he insisted that Pitchford perform his obligations. Recognizing that Callender would not be tricked by Randy’s misdirection, Pitchford went on the attack, commencing an intentional and malicious campaign of hostility toward Callender. Outside of the workplace, Pitchford began to shun Callender from various events and opportunities while using his Twitter handle (“DuvalMagic”) to publicly showcase a false image of love and tolerance. Behind Gearbox’s closed doors, however, Pitchford wielded vile bigotry against Callender and charitable causes about which Callender cared.

48. By June of 2018, Pitchford’s tyranny was unrelenting. Despite Pitchford’s failure to deliver on his various promises to Callender, Pitchford was pressuring Callender to lend even more help to Pitchford. Specifically, Pitchford hassled Callender to help Pitchford capture 100% control of Gearbox by squeezing-out Pitchford’s sole remaining partner, Stephen Bahl. According to Randy Pitchford, it was imperative that Callender convince Bahl to accept a low buy-out price so that Pitchford could afterward sell his equity to investors at a much higher price. Among the additional enticements that Pitchford offered to Callender if he joined along: an

opportunity to become Randy's personal counsel in exchange for 5% of every future dollar Pitchford made. Callender declined Pitchford's solicitation.

49. Convinced of the futility in trying to correct Pitchford—and in compliance with the terms of the Cabinet Pact that all parties signed—Callender retained counsel in July of 2018 to “reach an agreement with the President” about Callender’s “exit strategy” from Gearbox. In preparation thereof, Callender met with Gearbox’s outside counsel at Scheef & Stone to inform them of the problems at issue. During these meetings, Callender’s expressed his specific intent to negotiate his exit strategy per the Cabinet Pact, with which everyone was familiar.

50. On the evening of July 27, 2018, Callender personally informed fellow Cabinet members about his intent to commence his exit-strategy negotiations with Randy, per the Cabinet Agreement. In response, several Cabinet members expressed disappointment about the notion of Callender’s departure, frustration about Randy’s penchant for manipulation, and heartfelt concern over their own security in light of Randy’s willingness to exploit his oldest friend. To paraphrase one Cabinet Member, “If Randy will treat his best friend this way, what chance do the rest of us have?”

51. On the evening of July 27, 2018, Randy Pitchford learned of Callender’s intent. In response, Randy Pitchford preemptively announced a blatant falsehood: that Callender had “resigned” from Gearbox. In his declaration, Randy-the-consummate-performer proclaimed that it was “[w]ith regret” that he was accepting Callender’s resignation. Randy’s performance was a complete sham.

52. When Callender protested that he wasn’t resigning as Randy was claiming—noting that Randy alone was invoking the word “resign”—Randy refused to listen. Instead, Randy immediately severed Callender from the Gearbox systems and the new Gearbox

headquarters (the construction of which was spearheaded by Callender). During this time, Randy instructed Gearbox's IT department to "intercept" all communications from Callender so that Callender could not correct Pitchford's false narrative about Callender's employment. Meanwhile, all of Callender's benefits and pay were summarily terminated.

53. Hell-bent on retaliation—and hoping to pressure Callender into silence about the reasons why Callender was invoking his Cabinet Pact/exit-strategy terms—Pitchford engaged in unthinkable acts that will become clear throughout discovery and trial.

54. To date, Callender has received no accounting or information regarding the interests to which he is entitled; his Hatch interests, his Gearbox interests, his Gearbox royalties, his Cabinet Shares, etc. Indeed, the multi-million-dollar home owned by The Hatch is reportedly unoccupied, and it is unclear whether the property is being winterized or maintained.

55. On every front, Pitchford continues to do what he does best before industry audiences: conceal cards while dealing from the bottom of the deck. If history is any indication, Randy Pitchford will do everything imaginable to falsely deny Callender's interests while masquerading as the hero/villain. Callender has no intention of allowing this to happen at his expense, or the expense of the talented people he served for nearly a decade as Gearbox's General Counsel.

CAUSES OF ACTION

Breach of Fiduciary Duty

56. Plaintiff incorporates by reference all preceding allegations in this lawsuit, as if set forth in their entirety in this paragraph.

57. As a member in The Hatch, Defendant Pitchford owed fiduciary duties to Plaintiffs, including the duties of loyalty, disclosure, obedience, honesty and good faith.

58. A relationship of trust and confidence existed between the Plaintiff and Defendants. By virtue of this relationship of trust and confidence, the Defendants owed fiduciary duties to the Plaintiff.

59. The Defendants possessed the following duties to Plaintiff: the duty of loyalty and utmost good-faith and care; the duty to act with integrity of the strictest kind; the duty of fair, honest dealing; the duty of full disclosure; the duties of good-faith, fair dealing, loyalty, and fidelity; the duty of candor; the duty to refrain from self-dealing and conspire with one another in self-dealing; the duty to refrain from hiding or stealing assets; the duty to refrain from usurping opportunities; the duty of full disclosure on all matters; the duty to refrain from acting adverse to the Plaintiff; the duties of utmost good-faith, fairness, and honesty in dealing with matters pertaining to the relationship; and a duty to account.

60. As a result of these breaches of fiduciary duty, duty of care and duty of loyalty, the Plaintiff is entitled to actual, consequential, incidental, fee disgorgement, fee forfeiture, special and exemplary damages in excess of the minimum jurisdictional limits of this Court.

61. Further, Plaintiff seeks forfeiture and disgorgement of all benefits that have been received by Defendants as a result of these breaches of fiduciary duties, as well as rescission of any resolutions, agreements, or other acts that result from any breach of fiduciary duty.

62. The Defendants breached those fiduciary duties to Plaintiff.

63. These breaches of fiduciary duties by Defendants proximately caused the damages suffered by the Plaintiff.

64. Defendant Pitchford has breached his fiduciary duties by the following acts

- a. “freezing out” Plaintiff from the business, assets and profits of The Hatch;

- b. Refusing to provide information to Plaintiff concerning the business of The Hatch;
 - c. Converting, usurping and misusing The Hatch funds for his personal benefit;
 - d. Refusing to maintain the real property located in Dallas County that is owned by The Hatch.
 - e. Transferring The Hatch funds to his personal accounts;
 - f. Refusing to share profits of The Hatch with Plaintiff.
65. Defendant Pitchford's wrongful acts have damaged Plaintiff and The Hatch.
66. Defendant Pitchford's wrongful acts were committed intentionally, willfully and wantonly and with gross disregard for the rights of Plaintiff and The Hatch.

Breach of Contract

67. Plaintiff incorporates by reference all preceding allegations in this lawsuit, as if set forth in their entirety in this paragraph.
68. Plaintiff and Pitchford and Gearbox entered into various contracts, all independent of each other, including the Cabinet Pact; the contract by which Plaintiff would be given a 3% equity interest in Gearbox; and the contract by which Plaintiff would receive a Transaction Fee on outside investment in Gearbox.
69. Plaintiff fully performed all of his obligations under each of these Contracts
70. Defendants Pitchford and Gearbox breached their duties under each of the Contracts as described in the preceding paragraphs and incorporated herein fully by reference.
71. Defendant Pitchford and Gearbox's breaches of the Contracts have caused the Plaintiff to suffer losses and damages.

72. Defendants' breaches of the Contracts have forced Plaintiff to retain counsel to protect his rights, and therefore to incur and pay legal fees and expenses related thereto.

Fraud; Fraud by Omission; Fraud By Concealment; Fraud by Non-Disclosure; Fraud by Misrepresentation; Statutory Fraud

73. Plaintiff incorporates by reference all preceding allegations in this lawsuit, as if set forth in their entirety in this paragraph.

74. Defendants Pitchford and Gearbox made material misrepresentations to Plaintiff as set forth in the preceding paragraphs and incorporated herein fully by reference.

75. Plaintiff Callender reasonably relied on these foregoing misrepresentations.

76. Plaintiff Callender suffered damages and losses caused by his reliance on Defendants' misrepresentations and concealments.

77. Defendants made the foregoing fraudulent misrepresentations and concealments intentionally, willfully and wantonly and with gross disregard for the rights of Plaintiff.

Plaintiff's Demand for an Accounting of The Hatch, LLC

78. Plaintiff is entitled to an accounting of The Hatch, LLC's earnings under Texas law and hereby demands same.

Plaintiff's Demand for an Accounting of Gearbox Software, LLC

79. Plaintiff is entitled to an accounting of Gearbox Software, LLC's earnings under Texas law and hereby demands same.

Aiding And Abetting, Joint Enterprise, Knowing Participation, Assisting And Encouraging, Participatory And Vicarious Liability, And Concert Of Action

80. Plaintiff repeats and re-alleges the allegations set forth in all preceding paragraphs of this Petition, as if fully set forth herein.

81. The Defendants aided and abetted one another in committing unlawful acts against the Plaintiff.

82. The Defendants had specific intent and knowledge that their conduct constituted unlawful acts. Clearly, the Defendants had the intent to assist one another in committing the unlawful acts.

83. The Defendants gave one another assistance or encouragement and the Defendants' assistance or encouragement was a substantial factor in causing the unlawful acts. The Defendants are individually vicariously liable for the tortious conduct and wrongdoing of their agents.

84. The actions of Defendants complained of herein were a proximate cause of harm to Plaintiff and has resulted in actual damages in an amount within the jurisdictional limits of this Court.

85. As a result of Defendants' conduct, which was committed knowingly, willfully, intentionally, with actual awareness, or with actual malice, Plaintiff also seeks the recovery of exemplary damages from the individual Defendants.

86. Further, the wrongful acts of the Defendants set forth in this Count were done maliciously, oppressively, and with the intent to harm the Plaintiff, and the Plaintiff is entitled to punitive and exemplary damages to be ascertained according to proof, which is appropriate to punish and set an example of each of the Defendants. Accordingly, the Plaintiff respectfully requests that exemplary damages be awarded against the Defendants.

Attorney's Fees

87. Plaintiff repeats and re-alleges the allegations set forth in all preceding paragraphs of this Petition, as if fully set forth herein.

88. Plaintiff asserts that an award of reasonable and necessary attorneys' fees to Plaintiff would be equitable and just and, therefore, is authorized by TEX. CIV. PRAC. & REM. CODE.

89. Plaintiffs now sue Defendants for their reasonable and necessary attorneys' fees and expenses of litigation for this action and any appeal to an intermediate court or the Texas Supreme Court.

Damages And Exemplary Damage Cap-Busting Allegations

90. Plaintiff repeats and re-alleges the allegations set forth in all preceding paragraphs of this Petition, as if fully set forth herein.

91. Plaintiff further alleges that the cap on punitive damages found in TCPRC 41.008 is not applicable to Plaintiff's claims in this case because the Defendants knowingly or intentionally violated the Texas Penal Code. The Defendants violated numerous sections of the Penal Code including but not limited to forgery, misapplication of fiduciary property, and obstruction of justice such that there is no cap on punitive damages.

92. The Defendants, with intent to defraud or harm Plaintiff, and by deception as described herein, specifically to perpetrate a fraud and do harm to Plaintiff, which has destroyed Plaintiff's property and pecuniary interests. As such, there is no applicable statutory cap on the amount of punitive damages the jury may award Plaintiff in this case and Plaintiff thus seeks the highest amount as may be awarded by the jury in this case.

93. The actual amount of damages sought by Plaintiff is within the jurisdictional limits of this Court, including any statutory damages, punitive damages inclusive of reasonable attorney's fees, or as may be awarded by the jury in its deliberation after the hearing of evidence in this case.

94. As a proximate result of the incident made the basis of this suit and Defendants' conduct, Plaintiff brings this claim against the Defendants to recover damages for the following items:

- a. Plaintiff is also entitled to damages against the Defendants for disgorgement of all its profits as a result of the breach of fiduciary duties;
- b. Plaintiff is entitled to benefit of the bargain, consequential damages, out of pocket expenses,
- c. Plaintiff is entitled to mental anguish damages;
- d. Plaintiff is entitled to prejudgment and post judgment interest;
- e. Plaintiff is entitled to cost of court;
- f. Plaintiff is entitled to treble damages and punitive damages;
- g. Plaintiff is entitled to attorney fees;
- h. Plaintiff is entitled to such other and further items of damages as may be supplemented as a result of the discovery performed in this suit

JURY DEMAND

95. Plaintiff hereby respectfully demands an expedited trial by jury.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that Defendants be cited to appear and answer, as required by law, and that Plaintiffs have the following relief:

- a. Actual damages in the amount determined to have been sustained by Plaintiff;
- b. Punitive damages as required by law;
- c. Pre- and Post-Judgment Interest;

- d. Costs of this lawsuit, including reasonable attorneys' fees, experts' fees, and other disbursements; and
- e. Such other and further relief, at law or in equity, to which Plaintiff may show himself justly entitled.

Dated: December 21, 2018

Respectfully Submitted,

By: /s/ James S. Bell

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ATTORNEYS FOR PLAINTIFF

1 A. I don't know.
2 Q. How informal is this 5 percent?
3 A. Well, it's an understanding between my wife
think it's a pretty fair and strong
54 but I require no documents to feel
6 comfortable with it.

7 Q. And you're not aware of any documents,
8 whether it be the formation documents or your
9 financial statements or e-mails or of any documents on
10 the plan that -- suggesting you have a 5 percent
11 interest in KPitch. It's an informal understanding
12 with your wife; is that accurate?

13 MR. HENRY: Objection, form.

14 A. Are you asking, are there any documents of
any kind, or are you asking --

16 Q. (BY MR. PRYOR) Yeah.

17 A. -- can I confirm there's no documents of any
kind? Which question do you want me to answer?

19 Q. I was going to ask, but I will take both of
those.

21 A. Okay. I am sure there is something. I know
we've built models on whiteboards, and we probably
shared Word documents. I don't know where those are,
if any of them even exists. But I know that those
kinds of things took place.

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1 Q. So they were --
2 A. If they become germane, I might be able to
3 dig stuff up. But I don't recall.
4 Q. So there may be documents that reflect the
5 informal arrangement that you have 5 percent interest.
6 And those documents would simply reflect it. They
7 would not be formalizing it. True?
8 A. Correct.

9 Q. And I apologize for not knowing this
gentleman's last name. What is Wade's interest in
11 KPitch?

12 A. Wade is general counsel for Gearbox.

13 Q. Tell me his last name. I'm uncomfortable
14 calling him Wade.

15 MR. CALLENDER: Callender.

16 MR. PRYOR: Thank you.

17 MR. CALLENDER: You can call me Wade.
18 That's fine.

19 MR. PRYOR: Outside the deposition I

20 will be happy to **EXHIBIT 1**

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25 kinds of things took place.

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RANDY PITCHFORD AS CORP. REP. OF KPITH ENTERPRISES - October 05, 2016

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3 dig stuff up. But I don't recall.

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5 informal arrangement that you have 5 percent interest.
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18 That's fine.

19 MR. PRYOR: Outside the deposition I
20 will be happy to.

21 Q. (BY MR. PRYOR) Okay. Mr. Callender, what
22 is his interest in KPitch?

23 A. I don't know.

24 Q. You know he has an interest?

25 A. Perhaps.

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RANDY PITCHFORD AS CORP. REP. OF KPITH ENTERPRISES - October 05, 2016

1 Q. **Okay.** Well, you -- I am only basing it on
2 what you said at the TI hearing. You're not sure if
3 he has an interest or not?



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1 Q. Okay. Well, you -- I am only basing it on
2 what you said at the TI hearing. You're not sure if
3 he has an interest or not?

4 A. I think that, perhaps, you should ask Wade
5 and Kristy that question. I don't want to speak for
6 that.

7 Q. Okay. I'm now going to what you said at the
8 TI hearing. You testified that Mr. Callender had an
9 interest in KPitch, and now you're telling me you
10 don't --

11 A. I believe that's true.

12 Q. Okay. You just don't -- you believe he has
13 an interest. You just don't know what it is?

14 A. Correct.

15 Q. Okay. What is your belief based on?

16 A. Interactions, conversations, history.

17 Q. Okay. And tell me about those.

18 A. What do you want to know?

19 Q. What you recall.

20 A. We have had lots of interactions
21 contemplating this thing. It's sort of like -- I
22 mean, we knew that there would be some benefit from
23 Wade's experience and expertise, and there's probably
24 some deserved entitlement for that. So there was some
25 arrangement that was understood between KPitch and

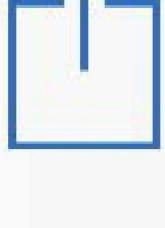
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RANDY PITCHFORD AS CORP. REP. OF KPITH ENTERPRISES - October 05, 2016

1 Mr. Callender, and that was between Kristy and Wade.

2 Q. Okay. Is it of the nature that
3 Mr. Callender is providing services and that if the
4 businesses go well, those services will be recognized
5 with some interest in the business in the future?



Done 2016.10.05 Deposition of Randy ...



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2 Q. Okay. Is it of the nature that
 3 Mr. Callender is providing services and that if the
 4 businesses go well, those services will be recognized
 5 with some interest in the business in the future?

6 A. That sounds right.

7 Q. Okay. Does the restaurant or the coffee
 8 shop, one of them, have the right to put an awning
 9 over a patio?

10 A. I don't recall.

11 Q. Do you recall anything regarding a
 12 waterline?

13 A. Yeah.

14 Q. Okay. What do you understand the issue is
 15 regarding a waterline?

16 A. I know that there was a complication because
 17 I believe that there was a waterline put in that would
 18 interrupt the position of a patio, and so that became
 19 a point of contention.

20 Q. Does KPitch have a position regarding that?

21 MR. HENRY: Objection, form. I'm going
 22 to first ask Counsel before I instruct not to answer
 23 what it has to do with the limitations on the
 24 deposition with respect to --

25 MR. PRYOR: Is that not part of what

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